



**STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
REAL ESTATE APPRAISER COMMISSION**

**500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243-1166  
615-741-1831**

**December 15, 2008  
Second Floor Conference Room, Andrew Johnson Tower**

The Tennessee Real Estate Appraiser Commission met December 15, 2008, at 9:15 a.m. in Nashville, Tennessee, at the Andrew Johnson Tower in the second floor conference room. Chairman, James E. Wade, Jr., called the meeting to order and the following business was transacted.

**COMMISSION MEMBERS PRESENT**

James E. Wade, Jr.  
Herbert Phillips  
Marc Headden  
Thomas R. Carter  
Kenneth Woodford  
William R. Flowers, Jr.  
Najanna Coleman

**COMMISSION MEMBERS ABSENT**

Jason West  
Dr. Edward A. Baryla

**STAFF MEMBERS PRESENT**

Nikole Avers, Administrative Director  
Jesse D. Joseph, Staff Attorney

**ADOPT AGENDA**

The Commission voted to adopt the agenda. Ms. Coleman made the motion to accept the agenda and it was seconded by Mr. Phillips. The motion carried unopposed.

**MINUTES**

The November 2008 minutes were reviewed. Mr. Phillips made the motion to accept the minutes as written. It was seconded by Mr. Carter. The motion carried unopposed.

## GENERAL BUSINESS

### Experience Interviews

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**Michelle R. Cook** made application to upgrade from a registered trainee to become a certified residential appraiser. Mr. Wade was the reviewer and stated that he would recommend approval of her experience. Ms. Coleman made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

**Paige P. McGehee** made application to upgrade from a registered trainee to certified residential appraiser. Mr. Flowers was the reviewer and stated her reports were satisfactory, though he noted there was a minor problem with the source for market value, recommended approval of his experience. Ms. Coleman made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

**Merritt F. Creasman** made application to upgrade from a certified residential appraiser to become a certified general appraiser. Mr. Headden was the reviewer and stated that he would recommend approval of his experience. Mr. Flowers made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

**James Plante** made application to upgrade from a certified residential appraiser to become a certified general appraiser. Mr. Headden was the reviewer and stated that he would recommend approval of his experience. Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

**John C. L. Hay** made application to upgrade from a registered trainee to become a certified general appraiser. Mr. Phillips was the reviewer and stated that he would recommend approval of his experience. Mr. Headden made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

**Elizabeth McCracken Sykes** made application to upgrade from a certified residential appraiser to become a certified general appraiser. Mr. Phillips was the reviewer and stated that he would recommend approval of her experience. Mr. Headden made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

**David E. Cotner** made application to upgrade from a registered trainee to become a certified residential appraiser. Mr. Carter was the reviewer and stated that he would recommend approval of his experience. Mr. Headden made the motion to accept the recommendation and Ms. Coleman seconded the motion. The motion carried unopposed.

**Lara S. Watson** made application to upgrade from a registered trainee to become a certified general appraiser. Mr. Woodford was the reviewer and stated that he would recommend approval of her experience. Mr. Flowers made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

**Bryan N. Montgomery** made application to upgrade from a registered trainee to become a certified general appraiser. Mr. Woodford was the reviewer and stated that he would recommend approval of his

experience. Mr. Flowers made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

### **Education Committee Report**

Dr. Baryla reviewed the education and submitted his recommendation to Ms. Avers via e-mail. Dr. Baryla recommended approval of all the courses sent in by the course providers; however, he made note that the Appraisal Institute course number 1257 "On-Line General Site Valuation & Cost Approach course requested approval of only 14 credit hours, but the course documents 28 hours of classroom time. Pertaining to the Individual course approval, Dr. Baryla recommended against approval of the course submitted by applicant Clare B. Norris titled, "2008 – Manufactured Housing; Licensed & Certified Installer Course" because this course does not seem to meet 1255-2-006 (2), sentence 1 in that it does not appear to be an appraisal course. He recommended approval of the request of applicant Eric A. Trotz for the course "On-Line Eminent Domain and Condemnation", which Ms. Avers noted was an approved course prior to the time the applicant took the course and was approved again subsequent to the time the applicant took the course. Mr. Headden made the motion to accept Dr. Baryla's recommendation. Mr. Phillips seconded that motion. The motion carried unopposed.

### **EDUCATION COMMITTEE REPORT**

Provider	Number	Course Name	Instructors	Hrs.	Type
APPRAISAL INSTITUTE	1252	On-Line Subdivision Valuation	Don Emerson	7	CE
APPRAISAL INSTITUTE	1257	On-Line General Site Valuation & Cost Approach	Arlen Mills	14	CE
NAIFA	1253	Valuing Real Estate In A Changing Market	Mike Orman	8	CE
SPEARMAN CENTER, THE	1256	FHA Tools of the Trade: Inspecting & Measuring Residential Property	W. Lewis Spearman	7	CE
ASFMRA	1254	Practical Navigation for ASFMRA	Rick Hood	7	CE
ASFMRA	1255	Cost Estimating	Doug Hodge	8	CE
NAIFA	1258	Appraising Complex Properties – Hotel Golf Resort Property	Eugene Stuard	7	CE
NAIFA	1259	Appraising Complex Properties – Industrial Property	Eugene Stuard	7	CE
NAIFA	1260	Appraising Complex Properties – Office Property	Eugene Stuard	7	CE
NAIFA	1261	Appraising Complex Properties – Retail Property	Eugene Stuard	7	CE
NAIFA	1262	Understanding Appraising Subdivisions	William Ammonett	4	CE
NAIFA	1263	Understanding Leases	William Ammonett	4	CE
NAIFA	1264	Understanding Highest and Best Use	William Ammonett	7	CE
NAIFA	1265	The HP 12c Calculator and the Six Functions of One Dollar	William Ammonett	7	CE
NAIFA	1266	5.0A 2008 National USPAP Update	Mike Orman	7	CE

### Individual Course Approval

Name	License #	Course Provider	Course Name	Hrs	Type
Clare B. Norris	3075	TN Manufactured Housing Assn	2008 – Manufactured Housing; Licensed & Certified Installer Course	--	Denied
Eric A. Trotz	CG 1174	Appraisal Institute	On-Line Eminent Domain and Condemnation	7	CE

### LEGAL REPORT

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#### 1. L04-APP-RBS-20040180081 Docket No. 12.36-095857A

A complaint was opened in this matter in April of 2003, which involved the Respondent's August, 2002 appraisal of approximately 9 acres of vacant land in a small town in Tennessee which was in the process of being taken by the City pursuant to its power of eminent domain. The matter was investigated and sent to the Legal Division in February of 2004. Proposed consent orders were sent to the Respondent in the spring of 2004 and in September of 2006, and at least one informal conference was conducted between 2004 and mid-2007. A formal proceeding was filed in September of 2007 and was set for hearing today. On or about November 24, 2008, counsel for the Commission and Respondent's counsel entered into a verbal agreed order wherein Respondent agreed that he violated SRs 1-1(a), (b) & (c), 1-2(e)(i), 1-4(a), 1-5(c), and 2-1 (a) and (b). Respondent also agreed to pay a \$1,250.00 civil penalty. The hearing was continued by the Judge to give the Commission the ability to consider this proposed disposition, and to be reset for the April, 2009 meeting if this settlement is not approved.

If this case were to be tried, it is very likely that counsel for the Commission would put on additional proof which could constitute violations of additional provisions of USPAP, including the Ethics Rule, Conduct Section. Respondent has indicated very strenuously that he has already admitted that the report was put forth in a misleading fashion, by admitting his violation of SR 2-1(a), but he states he can not admit to violating the Ethics Rule, Conduct Section, and cannot admit that he engaged in misleading or fraudulent conduct.

The Administrative Director has informed counsel that she does not approve the order unless the Respondent admits to a violation of the Ethics Rule, Conduct Section.

Counsel for the Commission understands the point of view of the Administrative Director, and realizes that there is documentary evidence within the file that could be used to support a credible argument that Respondent may have violated the Ethics Rule, Conduct Section. The Respondent has also testified previously at a lengthy deposition in the condemnation case and has defended his conduct and has set forth why he does not believe he acted in a fraudulent fashion, and why he believes he did not act in an intentionally misleading fashion. The content of the specific documents or exhibits, and the content of the Respondent's testimony at deposition should not be brought before the Commission today in that if this matter is not approved, the specific nature of the future evidence at hearing should not be prematurely disclosed.

This proposed agreed order does not provide me with everything I had originally asked for during the negotiations, but I can nonetheless live with and recommend it. I also realize that in administrative litigation, arriving at a reasonable settlement requires some concessions on both sides, as long as the

concessions on behalf of the regulatory agency are not excessive and do not undermine the enforcement function. I do not believe that is the case in this matter.

The major factors which I took into consideration are: (1. the age of the underlying complaint (5 and ½ years old); (2. the fact that there has never been any prior consent order proposed in the case seeking any suspension or revocation of Respondent's certification; and (3. the last consent order proposed to Respondent in 2006 offered him a reduced civil penalty of \$250.00. The agreement to a more substantial civil penalty is in itself some acknowledgement by Respondent of the seriousness of his violations.

Counsel for the Commission does not treat the Director's concerns lightly and recognizes she may desire to address the Commission regarding her reservations. The Respondent's counsel has requested the ability to address the Commission directly relative to this matter by letter – which does not identify his client by name, location or otherwise. I have agreed and have distributed a copy of his December 12, 2008 letter attached to this report.

**Prior Complaint / Disciplinary History:** None

**Recommendation and reasoning:** Counsel for the Commission and Respondent's counsel request that the Commission approve this proposed agreed order. The Administrative Director does not approve the agreement.

**Vote:** Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

## **2. & 3. L08-APP-RBS-2008010991 & 2008011041**

This matter was approved by the Commission for a consent order at the September, 2008 meeting wherein Respondent was to pay a \$1,000.00 civil penalty, have his certified general certification downgraded for a 6 month period to certified residential status, and wherein he was complete and pass three courses (general appraiser sales comparison approach, general appraiser income approach, and general appraiser site valuation and cost approach course). Respondent will also be required to submit to the Administrative Director 3 appraisal reports chosen for review and determined to be USPAP compliant by the reviewing Commission member as to these complaints, from a 60 day log of commercial appraisals submitted by Respondent which he performs under the supervision of a certified general appraiser.

Respondent is unable to send in the entire \$1,000 upon his execution of this order. He has, however, has signed a revised order which would allow him to pay \$500 now, and deliver the second \$500 installment payment on this civil penalty by January 31, 2009. He has faxed counsel a copy of the revised order and of the first \$500 check which is on the way in the mails, according to Respondent. The Administrative Director and counsel find the revised agreement acceptable.

**Prior Complaint / Disciplinary History:** No complaints other than these two matters.

**Recommendation and reasoning:** Counsel for the Commission and the Administrative Director recommend that the Commission approve this revised consent order.

**Vote:** Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. In discussion, Mr. Phillips asked what happens in this complaint matter if the Respondent doesn't

pay the civil penalty in full. Mr. Joseph stated that the complaint matter doesn't need to be closed until the entirety of the civil penalty is received. A vote was called and the motion carried unopposed.

**4. – 6. L08-APP-RBS-2008009631; L08-APP-RBS-2008011131; L08-APP-RBS-2008017421  
Commissioner Phillips was the Reviewer**

In the first complaint (2008009631), the Complainant, a consumer, stated that in the summer of 2005 the Respondent appraised her residence. She stated the loan company would not give her a copy of the paperwork at that time. She recently obtained a copy of the appraisal from them and claims the appraisal was "total fraud". The Complainant alleged the boundaries of the neighborhood were misreported by 15 miles and some highway information is completely incorrect. She stated that the comparable sales are "made up" that the houses do not exist on those lots. She stated that she photographed these houses and they are not similar in size and characteristics, and that one is a commercial building built in 2000. She also stated the appraisal report did not even from the area she lives. She stated that she was over-charged for the appraisal and the property was over-valued at \$294,000.

In the second complaint (2008011131), the Complainant, an outside agency, submitted a written complaint by a borrower along with a field review conducted on the same property as involved in the first complaint, which was allegedly appraised by the Respondent in July of 2005. In this second complaint, it was alleged the Respondent over-valued a residential property, misreported comparable sale data, included photos of comparable sales that are not the same properties as those on the specified sites, used a commercial property as a comparable sale and reported it as residential, failed to support adjustments made in the sales comparison approach and conclusions of price per square foot and site value in the cost approach, failed to identify persons contributing significant appraisal assistance, misreported inspection of the subject property, and that she had misreported neighborhood boundaries and market information. This second Complainant, a lender, concluded that the misleading appraisal report caused them to suffer a substantial loss as a result of this loan.

The Respondent stated in her response letter that she didn't complete the referenced appraisal assignment, but that somehow someone created a terrible report and scanned her signature to the file. She stated this report is not in her database or file cabinet. She stated the file number and invoice format is that of her office. She stated that the client in this appraisal was one of her clients, but that if a property would require repair, she would stop the assignment and collect a trip charge for the assignment. She stated she could only surmise that possibly someone in the office "cloned" a report at the beginning of an assignment. Generally, when her and her two trainees went out to do the out of town assignments, she would return to inspect the property the trainees were measuring. She stated as soon as they realized the property was in need of repair, she would contact the branch manager and not go any further on such an assignment. It would have been her trainee's responsibility to include the sketch and photos of the property to the file as it was previously set up. She stated that once the order was a cancelled file, it would have been deleted and that may explain why she no longer has the file. She stated she fears that her office assistant may have sent the incomplete report to the client as the assistant had a very friendly relationship with the client. She stated this assistant left her employment in September of 2005 because she used the Respondent's bank account information to pay her personal utility bills. She stated this person was arrested. She stated after reviewing the content of the page of the report provided by TREAC she agrees that this is a misleading appraisal report. She stated she does not make these types of errors and would have known the property was not worth the stated amount and cannot believe this made it through the review process at the lender's end.

As to the third complaint (2008017421), the Complainant, a fellow practitioner and field reviewer, alleged that Respondent had over-valued a residential property, misreported owner information, misreported neighborhood and market information, misreported the condition of the subject property, failed to analyze sale history and listing history of the subject property, used comparables in superior condition to the subject without disclosure of their condition and appropriate adjustments, and inappropriately applied the cost approach to value. The complaint included the Complainant's field review which included photos of significant deferred maintenance to the subject dwelling.

The Respondent stated in her response letter that as of the effective date of the appraisal, the property was in good, renovated and remodeled condition with numerous repairs completed on the property. She stated the comparables used were in similar condition. She further stated that the ownership information at the time of the original report was correct from title information. She further stated the property was listed on January 19, 2007 for \$325,000 and she had a sales agreement for \$300,000 and that she did not have any record of a listing for \$315,000 and would not comment on the subsequent listings after the appraisal of \$134,900 and \$104,900. She stated that the notation on the report was the name of the subdivision within the neighborhood described, and she does not agree with the Complainant's allegation that she failed to analyze the sale and listing history of the subject. She contends she included the sale price and the list price of the subject property and it is indicated for the "recertification of value date". She further refuted the allegation that she misreported the condition of the subject property and supported her claim with interior photos included in the appraisal report and included a written statement from a neighbor of the subject property stating the house was damaged in storms. She stated the comparable sales used were similar in condition and were in similar locations/subdivisions. She stated that the cost approach usually sets the upper limit of value and she is not able to comment as to why the value indicated in the cost approach came in \$25,000 less than the indicated sales comparison approach value of \$297,000. She stated there have been approximately eight severe weather events that caused substantial damage to properties in the area and the subject was likely affected by damage inflicted after the effective date of her appraisal.

As to the first and second complaints, Commissioner Phillips is correct in pointing out that there has been no evidence produced that Respondent issued the fraudulent appraisal report in July of 2005, and no evidence has been obtained from any individuals who previously worked for Respondent at that time admitting that they conducted the inspection and prepared the appraisal report in question. Accordingly, Commissioner Phillips rightly points out that there does not appear to be provable evidence that Respondent knowingly permitted an employee or another person to communicate a misleading or fraudulent report in violation of the Ethics Rule, Conduct Section.

As to the third complaint, Commissioner Phillips is of the opinion that Respondent violated Standard Rule 1-1(b) by incorrectly reporting the actual ownership of the subject. At the time of the appraisal (January 2, 2007), according to the Shelby County Register of Deeds Office, the property was under the ownership of Eric Safford. April Anderson, as indicated by the Respondent, did not own the subject property on January 2, 2007, and only took ownership of the property on January 24, 2007. Respondent is believed to have violated SR 1-5 (a) by failing to properly analyze the sales history of the subject. The history cited as a prior transfer of the subject on February 27, 2007 for a consideration of \$282,150 is actually after the appraisal date of January 2, 2007. The correct prior sale according to the public records is a quit claim deed from Frances Rudley, grantor to Eric Safford, grantee for a consideration of \$21,559.45. Respondent appears to have violated SR 1-5 (b) by failing to analyze the sales contract. She reported the contract price and mentioned that the seller would be paying 6% in closing costs, prepaids, and loan related fees;

however, she failed to analyze the effect of these items on the reported appraised value. Respondent appears to have violated SR 1-6 (a) in that she reported a value of \$297,000 from the sales comparison approach and a value of \$272,661 from the cost approach with no explanation for the spread in these two approaches; moreover, the reconciliation of these two approaches was inadequate. The Reviewer that filed the Complaint indicated a value of \$80,000 as compared to the Respondent's reported value of \$297,000. Further, the field reviewer indicated that the house was in poor condition at the time of the Respondent's appraisal. It appears that the field reviewer's inspection was performed July, 2008 or approximately 17 months after the Respondent's inspection. With the information supplied to Commissioner Phillips, it is difficult to make a firm and definitive decision about the condition of the property as of January 2, 2007. The Respondent's value may not be appropriate, but a value of \$80,000 as found by the field reviewer appears to be inaccurate when considering the tax appraisal of \$241,100 for 2008.

**Prior Complaint / Disciplinary History:** Consent order imposing 1 and ½ years suspension effective November 7, 2008 (6 mo. actual suspension commencing 11/7/08, with balance of 12 months to serve on probation) for complaint files 2008000161, 2008008471, and 2008008631.

**Recommendation and reasoning:** Commissioner Phillips recommends that the first two complaints be dismissed due to lack of evidence of violations, and that Respondent be offered a consent order imposing a 30 day suspension against her certificate as to the third complaint, to run concurrently with the 1 and ½ year suspension order which is presently in place.

Counsel for the Commission and the Administrative Director concur with Commissioner Phillips' application of the USPAP provisions cited above in all three complaints, but would kindly ask whether he would accept a friendly modification of his recommendation to impose a 60 day suspension (to run concurrently) against Respondent for violations found in all three complaints. It appears, in the first two complaints, as if the Respondent has not complied with the Comment to the DEFINITION of SIGNATURE – which requires the appraiser to have sole personal control of affixing the signature to the report. Of course, according to the Preamble of USPAP, ethical and performance standards can be set forth in DEFINITIONS, as well as in Rules, Standards, Standards Rules, Statements and Comments. Respondent has admitted in an informal conference that a former office assistant (terminated due to other alleged fraud) had access to her electronic signature during that time period. She has also admitted that her office cashed the \$600 check for the appraisal in the first two complaints, even though she states unequivocally that she did not do the work. This would appear to be “dishonest” conduct, and Tenn. Code Ann. § 62-39-326(4) authorizes discipline for any act or omission involving “dishonesty, fraud, or misrepresentation.

**Vote:** Mr. Headden made a motion to accept the recommendation and Mr. Carter seconded the motion. In discussion, Mr. Headden asked if a civil penalty wouldn't be appropriate in these complaint matters. He also stated that the Respondent appears to have failed to supervise her trainees and some restriction on her ability to supervise trainees would seem appropriate in these complaint matters. After continued discussion Mr. Headden amended his motion to include that the Respondent should not be able to have any trainees under her supervision for a 3 year period which would commence from November 7, 2008 to November 7, 2011. This was in conjunction with the 60 day suspension previously recommended. Mr. Carter reaffirmed his second to the amended motion. A vote was called and the motion carried unopposed.

## **7. L08-APP-RBS-2008011891 Commissioner Flowers was the Reviewer**



On 10/25/06 Ms. Hawkins Brumit (Complainant's realtor) purchased 1407 Thatcher Road in foreclosure for \$96,050.00 from the United States of America. The tax appraisal at that time was \$117,800.00. On 2/14/07 Ms. Brumit traded this house via quit claim deed to Ms. Kay Arrowsmith Worley for a home at 1420 Thatcher Road with a tax appraisal of \$114,200.00. This transaction was listed in the MLS as a closed sale on 2/19/07 for \$129,000. Ms. Worley had owned the home at 1420 Thatcher since 10/17/03 on which date she had paid \$96,600.00 for the home. Realtor Brumit listed the home at 1420 Thatcher Road in the MLS for \$130,000.00. At some point in the time the Complainant signed a contract to purchase the subject property at 1420 Thatcher for \$130,000.00 and BB&T ordered an appraisal which was assigned to the Respondent. The Respondent appraised 1420 Thatcher Road for \$131,000.00 on 4/20/07. Complainant alleges, amongst many other things, that the Respondent over-valued her home because of an unethical relationship with the realtor, and that the realtor had not sold 1407 Thatcher for \$129,000. Complainant also alleges the transaction between Worley and Brumit in mid-February, 2007 was an even trade of the two properties.

Respondent provided four comparable sales in the immediate area, and proximity is not an issue relative to the location of these comparables. Respondent does disclose that the subject had been a Quit Claim sale within in the past 36 months (2/14/07); however, he does not discuss the details of that Quit Claim sale, and he does not list at all the two prior transfers of 1407 Thatcher (comp 3) – by quit claim deed on 2/15/07 and again on 10/25/06. It appears that Respondent relied entirely on the MLS information. In any case, it was solely the Respondent's responsibility to research both 1407 Thatcher Road and the subject's sales. Respondent has also closed his prior office and has changed his residential address since September or early October of this year, and has not completed the form the Administrative Director sent to him, wherein he was to update all of his addresses. On or about October 9, 2008, the residents at the new phone number Respondent provided to the Administrative Director (by phone) informed counsel that Respondent no longer lived there. Respondent has not responded to e-mails sent to him in order to attend an informal conference sought by Commissioner Flowers in October. We have no good address for Respondent, currently.

**Prior Complaint/Disciplinary History:** 200209965 (Dismissed); 200705412 (Dismissed); 200706986 (Consent Order \$500 & 2 courses); 200708255 (Consent Order \$500 & 2 courses)

**Recommendation and reasoning:** Based on Respondent's failure to properly list and analyze pertinent and required past sales of both the subject and one of the comps in violation of SR 1-4(a) and SR 1-5(b), given his failure to update his address information as required by statute or cooperate with the Administrative Director and given his prior disciplinary history involving the same types of prior violations, Commissioner Flowers, the Director and counsel recommend that a consent order be approved seeking Respondent's voluntary surrender, and should he not accept it, that a formal proceeding be commenced seeking the revocation of his certificate. We would also recommend that the Regulatory Boards investigators be asked to locate Respondent and serve him with the proposed consent order.

**Vote:** Mr. Woodford made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

#### **8. L08-APP-RBS-2008014211 Commissioner Wade was the Reviewer**

Respondent agreed to a previous consent order approved in September of this year and was previously requested to pay a \$3,000 civil penalty and to complete 30 hours of residential report writing courses (with examination). After an informal conference conducted in November between Commissioner Wade, the

Administrative Director, and counsel, Respondent expressed difficulty paying a large civil penalty. Based on the understanding Commissioner Wade and the Director had of the Respondent's problem areas as a result of the conference, it was determined that it would be reasonable to revise the proposal and allow Respondent to pay a \$500.00 civil penalty and to be required to complete 3 courses: (1. a 30 hour sales comparison course; (2. a 30 hour residential report writing course; and (3. a 15 hour site valuation and cost approach course. Respondent has signed such an order and the \$500 check has been faxed to me, to be placed in the mail by Respondent today.

**Prior Complaints/Disciplinary History:** 200500262 (Closed with Consent Order \$1,000 civil penalty and a course in Appraisal Methods); 200800562 (Closed with a letter of instruction regarding consistently reporting effective age and applicability of approaches to value).

**Recommendation and reasoning:** Based on Commissioner Wade's and the Director's understanding of the Respondent's problem areas, and the fact that this revised version of this order emphasizes heavily additional education instead of a much higher civil penalty, counsel, Commissioner Wade and the Director recommend that the Commission approve the revised consent order.

**Vote:** Mr. Headden made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

**9. L08-APP-RBS-2008017741 Commissioner Phillips was the Reviewer**

The Complainants (consumers) stated they own a 5.6 acre property and that they have invested \$290,000 in the property from 1993 to present, building the house and amenities for the property. They stated, in June of 2007, that the property was appraised at \$330,000 and they placed the house on the market at that time. In May of 2008, the listing expired with no offers, at a list price of \$294,975. They stated the property did not sell for two reasons:

- The neighbor had a first right of refusal on the property because they have an easement to cross a pond and dam, that the neighbor owns, but they are required to equally share in its maintenance and repairs. The Complainants alleged that when they did get an offer of \$275,000 on the property the neighbor exercised the right to refusal and had his attorney convince the buyers to withdraw.
- They further alleged that this neighbor had the Respondent appraise the property and he only appraised it for \$250,000. The Complainants stated they had to sell it to the neighbor for this price or never get it sold. They stated the appraisal completed by the Respondent did not compare properties similar in features or "price" even though they had an offer of \$275,000 and their property had been listed for \$294,975. Complainants stated the Respondent used comparable sales of \$245,000 and less, and that the amenities which cost \$80,000 were only given a contribution of \$15,000 in the sales comparison approach and excluded entirely from Respondent's cost approach. They stated the replacement cost of the garage was noted at \$21,600 but only given a \$15,000 adjustment in the sales comparison approach and that Respondent omitted the costly fencing. The Complainant finally alleged that the neighbor, the neighbor's attorney and the appraiser (Respondent) were in collusion to have the property appraise at the amount the neighbor was willing to pay.

The Respondent stated in his response letter that, "The complaint states that the appraisal excluded replacement cost for site improvement amenities. More specifically, these amenities include a 1,600 square foot detached metal garage and workshop area, fencing and an outbuilding. In the analysis of the contributory value of these site improvements, it is the considered opinion of this appraiser that these improvements offer a total combined contributing value of \$15,000. Contributory value is the actual value added to the property as a whole. While certainly considered, the replacement/depreciated cost of site improvements is not in and of its self, the determining factor. The estimated contributory value of \$15,000 for these improvements were addressed in both the sales comparison and cost approaches to value. In the cost approach, the amount of \$15,000 was included within the "As is Value" of the site improvement assessment. As for the accusation of collusion, Respondent denies such an accusation. He claims in his 22 years of dedication to this profession, this is the first and only formal complaint of any kind or nature that he has received. Respondent states he is very grateful for the opportunity that his job affords and in no way would he jeopardize his livelihood by conducting his practice in a dishonest manner."

Commissioner Phillips is of the opinion that Respondent violated: SR 1-2(e) (iv), since the site section of the report does not identify the cross-easement or its impact on the subject property or its value; SR 1-5 (a), since the Respondent did not obtain or analyze a copy of the sales contract; SR 1-1 (c), since the Respondent failed to apply an adjustment for age, given that the subject was 15 years of age as compared to the sales with ages ranging from 29 to 35 years and given the lack of any explanation as to the reason no adjustment was applied; and SR 1-6 (a), since there is no adequate summary of methods and techniques employed or reconciliation of conclusion and opinions. In addition, it should be noted that the form used to report the value is intended for mortgage finance transactions. (See Page 4 of 6, Fannie Mae Form 1004, March 2005). The assignment was for the neighbor's attorney.

**Prior Complaint / Disciplinary History: None**

**Recommendation and reasoning:** Commissioner Phillips recommends the Respondent be offered a consent order wherein he is required to complete both a 15-hour USPAP course, and a 30 hour Sales Comparison and Cost Approach course, which would not be eligible for continuing education credit. Respondent should be offered the ability for an informal conference relative to this proposal, and should Respondent not agree to this proposal, then commencement of a formal proceeding should be authorized.

**Vote:** Mr. Headden made the motion to accept the recommendation and Mr. Carter seconded the motion. Ms. Avers contributed to the discussion of the recommendation in this matter by pointing out that there currently is not a 30 hour sales comparison and cost approach course. There is a 30 hour "Sales Comparison and Income Approach" course that several providers have approved, and there is a 15 hour "Site Valuation and Cost Approach" course. Mr. Headden amended his recommendation that the Respondent should complete a 30 hour "Sales Comparison and Income Approach", a 15 hour "Site Valuation and Cost Approach" course, and the 15-hour USPAP course. Mr. Carter reaffirmed his second to this amended motion. A vote was called and the motion carried unopposed.

**10. L08-APP-RBS-2008017851 Commissioner Wade was the Reviewer**

The Complainant, a fellow practitioner, alleged the respondent included misleading information in two residential appraisal reports including: misleading square footage figures for the subject and comparables, photos of houses that are not the comparable properties listed, omitting porch and garage data, including basement area in GLA, misreporting sales prices, room counts, site size, sale date, omitting a pool adjustment, failing to support cost data, and omitting the income approach in a rental market.

No response was received from the Respondent, though he signed for the complaint by certified mail on August 14, 2008.

Commissioner Wade found the major errors committed as to one appraisal report of 318 Fawn Drive by the Respondent dated April 25, 2008 to be as follows:

The appraiser did not develop an opinion of reasonable exposure time in connection with the opinion of market value. The site dimensions were not provided in the report. The subject improvements were not accurately described in the report. It appears that the appraiser did not measure the dwelling, because the dimensions were taken from the property assessor's information and no upper level measurements are provided on the sketch.

The Gross Living Area size appears to be incorrect and is taken directly from the property assessors records. The comparable sales' garage parking information is incorrect. The sale price of sale 1 is incorrect. The comparable sales were not accurately described or analyzed in the report. According to the public records that the appraiser relied upon, the quality of construction of the 4 comparables is superior to the quality of construction of the subject.

The Gross Living Area sizes of comparables sales 1-3 provided in the report include finished basement areas. The Gross Living Area shown is much larger than actually exists. Comparable Sale 4 has an in-ground pool that is not mentioned by the appraiser.

The photographs of the comparable sales provided in the report do not appear to be photographs of the comparable sales.

The report did not correctly reflect the sales history of the subject over the past 36 months. The appraiser's comments regarding depreciation (40 year + economic life v. 70 year economic life) are not logical. The appraiser's estimate of land value appears to come from the assessor's records without any support from the market.

Commissioner Wade found the major errors committed as to a second appraisal report of 1518 McCarter Hollow Road by the Respondent dated April 25, 2008 to be as follows:

The appraiser is in violation of the Ethics (Conduct) Rule.

The appraiser did not develop an opinion of reasonable exposure time in connection with the opinion of market value. The appraiser did not provide a legal description. The site dimensions were not provided in the report and the shape of the lot is incorrect. The subject improvements were not accurately described in the report.

The sale price of sale 4 is incorrect. The comparable sales were not accurately described or analyzed in the report. Sale 1 is in a PUD (Gatlinburg Falls At The Park). According to the public records that the appraiser relied upon, the quality of construction of comparable 1 is superior to the quality of construction of the subject.

Comparable 1 was fully furnished at the time of the sale. The appraiser did not adjust for the personal property was included in the sales price. The appraiser makes a plus \$25,000.00 adjustment to sale 2, 3 and 4 for a 1 and 2 year difference in effective age. They are not consistent or explained in the analysis.

The size adjustments for the difference in the size of the subject property and the comparable sales are unreasonably low. The comparables are not adjusted for the difference in the sizes of the unfinished basement areas of the subject and the sales.

The photographs of at least two of the comparable sales provided in the report do not appear to be photographs of the comparable sales. The site values of comparables 1, 2, and 3 appear to significantly greater than the value of the subject, yet the appraiser makes no adjustment or comment. The appraiser's comments in the cost approach regarding depreciation (40 year + economic life v. 70 year economic life) are not logical.

**Prior Complaint / Disciplinary History:** 941851 (*Closed-Consent Order for USPAP and Principles courses*); 946105 (*Dismissed*); 200004349(*Dismissed*); 200206595(*Closed with a Letter of Warning*); 200313733(*Closed with a Letter of Warning*); 200419830(*Closed-Consent Order for Sales Comparison and USPAP courses*); 200504060(*Closed-Consent Order USPAP course & Letter of Warning*); 200706086 (*Consent order - \$1,000 + classes + Demonstration*); 200706090(*Consent order - \$1,000 + classes + Demonstration*); 200706704 (*Consent order - \$1,000 + classes + Demonstration*)

**Recommendation and reasoning:** Based upon the Respondent's, considerable prior disciplinary history, and numerous violations of the Ethics Rule, Conduct Section, and SRs 1-1(b)(c), 1-2(c)(e)(i), 1-4(a), (b)(i), and 2-2(b)(iii), and (viii) found by Commissioner Wade within the two appraisals which comprise this complaint, Commissioner Wade recommends that Respondent be offered a proposed consent order of voluntary surrender without the ability for any informal conference, and that if Respondent does not agree, that a formal proceeding be authorized seeking the revocation of his certificate.

**Vote:** Mr. Headden made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

#### **11. L08-APP-RBS-2008021581**

This complaint was submitted anonymously and included written allegations that, in the appraisal of a residential property, the Respondent misrepresented the style/characteristics of the subject dwelling by representing the dwelling as a ranch style home with no further explanation. Per the Complainant, this is a basement house, with no living area above grade. The Complainant further alleged photos included in the appraisal report were taken in such a way as to misrepresent the nature of the topography in relation to the dwelling. The Complainant stated that there were no adjustments for functional utility or style, and that the Respondent failed to properly analyze the comparable sales in relation to this house, resulting in a misleading report. Further, the zoning information and the census tract information were misreported, per Complainant.

The Respondent stated in his response letter that, due to the age of the report (September 23, 2003) he is no longer in possession of the workfile. He was provided a copy of the report submitted with the complaint by the TREAC office, and stated that several key addendum pages were missing, namely additional comments addressing the increased proximity of the comparable sales, use of older sales, the cover page with photo of the subject, additional photos of the subject's exterior and several "earthbuilt"

homes on the same street as the subject, and an addendum addressing the subject's construction and the presence of similar homes in the local market. He stated he could recall all of this additional documentation specifically because the lender requested him to drive back to the subject neighborhood, which is almost a hundred miles from his office, to photograph the above referenced "earthbuilt" homes on the same street as the subject. He also stated the addendum explained that no specific data was available on which to base any adjustments for functional utility. He admits that the zoning was misreported in the appraisal. The Respondent obtained and submitted to us a letter from the loan officer attesting to the fact that additional addenda and documentation were provided in the original of Respondent's appraisal report, which were not submitted by the anonymous complainant.

**Administrative Staff Observations from complaint file; (this matter was processed by the Administrative Director; however, her processing is not an appraisal review):** The adjustments made by Respondent for gross living area are inconsistent with the depreciated cost per square foot in the cost approach. Respondent made adjustments to comparable three for both effective age and condition; however, he included no summary of how these adjustments were derived or separated from each other. He provided no summary of the support for the adjustments for site or basement. The photos included of the subject property from both the Respondent's appraisal report and the Complainant's photos show that half of the dwelling (front/back) is about half below-grade level on a sloping grade. This feature should have been described by Respondent in the appraisal report, and given the information available there does appear to be some possibility that this report could have been misleading. The cover page does not have a photo, but was included with the complaint. Other than the URAR pages (1 & 2), there are no page numbers on this appraisal report so it is impossible for staff to determine if there are, in fact, pages missing.

**Prior Complaint / Disciplinary History:** 200707096 (consent order - \$2,500 + 15 hour USPAP course)

**Recommendation and reasoning:** Because of the age of the report submitted and the lack of workfile (now past the five years of required retention period), it would be difficult to establish whether this report contained the pages allegedly omitted, per Respondent, or if the report submitted by the Complainant was the whole report. As submitted, the report could be considered misleading. There is nothing in the body of the URAR form that would indicate this property was in anyway atypical construction and the photos included as part of the appraisal do not show the portion of the dwelling below grade. The Administrative Director recommends a **Letter of Instruction** pertaining to identifying any atypical features of a property in the reconciliation of the approaches to value and within the approaches to value consistently so as not to potentially mislead intended users of any appraisal reports. There was no summary in the sales comparison or cost approach sections of the report that there may have been any type of atypical design of the dwelling or that any functional obsolescence may have existed that would be recognized in the market, but was not adjusted for within these approaches. In addition, the letter should instruct the Respondent to summarize within future appraisal reports how adjustments are developed in the sales comparison and depreciation is applied in the cost approach as is required in **Standard Rule 2-2 (b)**.

**Vote:** Mr. Phillips made the motion to accept the recommendation and Mr. Carter seconded the motion. A vote was called. Mr. Flowers voted no in the matter, all others voted in the affirmative. The motion carried.

**12. L08-APP-RBS-2008023841 Commissioner Phillips was the Reviewer**

This complaint was submitted by a lender and included allegations that the Respondent over-valued a residential acreage property by using superior comparable sales and misrepresenting their distances.

The Respondent stated in his response letter that, the comparables used were similar properties and he denied intentionally misrepresenting their distances from the subject property. He stated he used the map software from his appraisal software and it automatically generates the placement of the subject property, the comparable properties, and their distances apart. He further stated that he always double-checks to make sure the distances are correct and that he did not manipulate their distances in any way. The review appraiser stated that comparables 1 & 2 were 8-12 miles away from the subject property. The Respondent stated comparable 1 is 6.60 miles away from the subject property and comparable 2 is 3.45 miles away from the subject property. The review appraiser also stated that comparables 1 & 2 are on larger acreage tracts than the subject. The Respondent stated he made adjustments for this difference. He did admit he found an error in the land adjustment for comparable 2 – his adjustment was \$1,500 when in fact it should have been \$15,000. He stated this was a typing error and should have been corrected before sending the appraisal to the client. He concluded that the subject property is not located in a subdivision with many comparable properties located nearby and that this was a difficult home to appraise as it was a larger custom built home with a 2,900 sq. ft. unfinished basement, located on an acre of land, and with a panoramic mountain view.

The Respondent submitted the appraisal, the work file from the appraisal, and also the letter that he wrote to the lender regarding the lender's decision to place him on its ineligible appraiser list explaining where he thought he was at fault and where he alleged the review appraiser was at fault.

Commissioner Phillips finds that the Respondent violated the following: SR 1-1(b), in that the Respondent admitted that he made an adjustment of a negative \$1,500 for site size when he meant to make a negative \$15,000 adjustment. ("In developing a real property appraisal, an appraiser must not commit a substantial error of omission or commission that significantly affects an appraisal"); SR 1-1 (c), in that the Respondent over-valued the property. ("In developing a real property appraisal, an appraiser must not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results). Respondent felt he over-valued the property by 10%.

**Prior Complaint / Disciplinary History: None**

**Recommendation and reasoning:** Commissioner Phillips recommends that a consent order be issued offering the Respondent a 30 day suspension of the Respondent's certificate and a \$500 civil penalty for his violations of SR 1-1 (b) and SR 1-1 (c) which lead to over-valuing the subject property. Respondent should also be offered the opportunity for an informal conference, and should he reject this proposal, a formal proceeding should be authorized.

**Vote:** Mr. Headden made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

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Being no further business, the meeting was adjourned at 10:50 a.m.

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Chairman, James E. Wade, Jr.

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Nikole Avers, Administrative Director